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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

- and -

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
☒ Affects Pacific Gas and Electric Company
☐ Affects both Debtors

** All papers shall be filed in the lead case,
No. 19-30088 (DM)*

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case) (Jointly Administered)

**STIPULATION AND AGREEMENT FOR
ORDER REGARDING LIMITED RELIEF
FROM THE AUTOMATIC STAY
BETWEEN THE UTILITY, JH KELLY,
LLC AND AECOM TECHNICAL
SERVICES, INC.**

1 This stipulation (the “**Stipulation**”) is entered into by and between Pacific Gas and
2 Electric Company (the “**Utility**” or the “**Debtor**”), as debtor and debtor in possession, and JH
3 Kelly, LLC, a Washington limited liability company (“**JH Kelly**”), and AECOM Technical
4 Services, Inc., a California corporation (“**AECOM**”). The Utility, JH Kelly, and AECOM are
5 referred to in this Stipulation collectively as the “**Parties**,” and each as a “**Party**.” The Parties
6 hereby stipulate and agree as follows:

7 **RECITALS**

8 A. AECOM was a prime contractor and JH Kelly was a subcontractor on a private
9 construction project on property owned by the Utility (the “**Project**”).

10 B. On January 25, 2019, JH Kelly filed a *Complaint for Foreclosure of Mechanics*
11 *Lien* initiating an action in the Shasta County Superior Court (the “**State Court**”) against the
12 Utility, titled *JH Kelly, LLC v. Pac. Gas & Elec. Co.*, Case No. CV-19-0191759 (the
13 “**Foreclosure Action**”). In the Foreclosure Action, JH Kelly alleges that it has not received
14 payment for provided labor, services, materials, and equipment for the Project, and that it filed
15 and recorded a Claim of Mechanics Lien as document number 2018-0030534 in the official
16 records of Shasta County on November 1, 2018 (the “**Mechanics Lien**”).

17 C. On January 29, 2019, JH Kelly filed a separate complaint in the State Court
18 initiating an action against AECOM, titled *JH Kelly, LLC v. AECOM Technical Services, Inc.*,
19 Case No. 19CV0172 (the “**JH Kelly-AECOM State Action**”), in which JH Kelly asserts various
20 claims in connection with the Project, including breach of contract by AECOM arising from
21 AECOM’s alleged failure to remit payments owed to JH Kelly for work it performed on the
22 Project.

23 D. The Utility and its parent, PG&E Corporation (collectively the “**Debtors**”), filed
24 these Chapter 11 Cases on January 29, 2019 (the “**Petition Date**”).

25 E. On March 1, 2019, AECOM removed the JH Kelly-AECOM State Action to the
26 U.S. Bankruptcy Court for the Eastern District of California, commencing adversary proceeding
27 number 19-03008 (the “**Adversary Proceeding**”). *See* Adv. Proc. Dkt. No. 1.
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1 F. On March 14, 2019, with the express consent of JH Kelly, this Court entered a
2 notice of transfer of the removed action. *See* Adv. Proc. Dkt. No. 11.

3 G. On March 18, 2019, AECOM filed in this Court its *Answer to Complaint*,
4 *Affirmative Defenses, and Counterclaim Against Plaintiff JH Kelly*. *See* Adv. Proc. Dkt. No. 16.
5 (“**Answer & Counterclaim**”).

6 H. On March 22, 2019, AECOM filed in this Court its *Third-Party Complaint*
7 *Against Pacific Gas and Electric Company*. *See* Adv. Proc. Dkt. No. 19 (the “**Third-Party**
8 **Complaint**”).

9 I. On March 22, 2019, AECOM also filed in this Court its Notice of Continued
10 Perfection of Lien attaching thereto its duly-recorded mechanic’s lien in the amount of
11 \$23,535,812.89. *See* Dkt. No 1016 (the “**AECOM Mechanic’s Lien**”).

12 J. In its Answer & Counterclaim against JH Kelly and its Third-Party Complaint
13 against the Utility, AECOM asserted that the Utility was the cause of the Project delays at issue
14 in the JH-Kelly AECOM State Action, and that the Utility is a necessary and indispensable party
15 to the JH Kelly-AECOM State Action.

16 K. On April 16, 2019, JH Kelly filed a motion in this Court to remand the Adversary
17 Proceeding to the State Court. *See* Adv. Proc. Dkt. No. 30 (the “**Motion to Remand**”).

18 L. On May 9, 2019, the Utility filed a partial objection to the Motion to Remand, in
19 which it did not object to the remand of the two-party dispute between AECOM and JH Kelly
20 but objected to its own inclusion in any order remanding the case. *See* Adv. Proc. Dkt. No. 42.

21 M. On May 9, 2019, AECOM opposed the Motion to Remand, arguing that it would
22 be inequitable to remand “this three-party dispute” to the State Court without the Utility because
23 the Utility is a “critical party.” *See* Adv. Proc. Dkt. No. 44.

24 N. On June 10, 2019, this Court granted JH Kelly’s Motion to Remand the removed
25 JH Kelly-AECOM State Action to the State Court, but ordered AECOM’s Third-Party
26 Complaint against the Utility severed and retained jurisdiction over it. *See* Adv. Proc. Dkt. No.
27 53.

1 O. On June 28, 2019, AECOM filed in the remanded JH Kelly-AECOM State Action
2 a *General Denial to Complaint and Affirmative Defenses Against JH Kelly, LLC*, pleading an
3 affirmative defense of failure to join an indispensable party, the Utility, pursuant to California
4 Code of Civil Procedure (“CCP”) § 389 (the “**Affirmative Defense**”).

5 P. On June 28, 2019, AECOM filed a Cross-Complaint in the remanded JH Kelly-
6 AECOM State Action (the “**AECOM Cross-Complaint**”), pleading affirmative claims against
7 JH Kelly for breach of contract, breach of the covenants of good faith and fair dealing,
8 negligence and indemnity, and declaratory judgement.

9 Q. On July 11, 2019, JH Kelly moved in the JH Kelly-AECOM State Action for
10 summary adjudication on, *inter alia*, the Affirmative Defense (“**JH Kelly’s Motion for**
11 **Summary Adjudication**”), seeking a declaratory judgment that the Utility is not a necessary and
12 indispensable party under CCP § 389. On August 30, 2019, AECOM filed its own motion for
13 summary adjudication (“**AECOM’s Motion for Summary Adjudication**”) against JH Kelly in
14 the JH Kelly-AECOM State Action seeking summary adjudication on AECOM’s (1) affirmative
15 defenses of ripeness, failure to satisfy conditions precedent, and failure to exhaust contractual
16 remedies, (2) request for a determination regarding JH Kelly’s duty to cooperate in the
17 presentation and prosecution of the disputes to PG&E under the parties’ contract, and (3) cause
18 of action for declaratory relief.

19 R. On September 16, 2019, AECOM filed a memorandum opposing JH Kelly’s
20 Motion for Summary Adjudication and arguing, *inter alia*, that the Utility is a necessary party
21 under CCP § 389(a) and an indispensable party under CCP § 389(b). On September 27, 2019,
22 AECOM also moved to dismiss the JH Kelly-AECOM State Action (the “**Motion to Dismiss**”)
23 on the basis that the Utility was an indispensable party pursuant to CCP § 389(b).

24 S. On October 16, 2019, AECOM filed in the Chapter 11 Cases a proof of claim
25 against the Utility. *See* Claim No. 53873 (the “**AECOM POC**”). AECOM asserts in the
26 AECOM POC that the Utility owes AECOM an outstanding and unpaid balance of
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1 \$34,750,867.00 for work it performed on the Project, portions of which are secured and
2 unsecured. *See* AECOM POC Addendum, at 4.

3 T. On October 20, 2019, the State Court issued its tentative ruling (the “**Tentative**
4 **Ruling**”) denying JH Kelly’s Motion for Summary Adjudication and AECOM’s Motion for
5 Summary Adjudication, as described in paragraph Q above. In the Tentative Ruling, the State
6 Court found that it “will have to determine whether the unpaid amounts were due to the conduct
7 or decisions of [the Utility], AECOM, or JH Kelly”; that “there is evidence that, without [the
8 Utility], complete relief cannot be accorded among those already party to the action”; that
9 “determining the issues . . . in the absence of [the Utility] will leave . . . substantial risk of
10 incurring double, multiple, or otherwise inconsistent obligations”; and that “[b]ecause parallel
11 issues are being litigated in Bankruptcy Court, . . . there is no way to protect against any
12 prejudice to [the Utility], JH Kelly, or AECOM.” The State Court adopted the Tentative Ruling
13 and denied JH Kelly’s Motion for Summary Adjudication and AECOM’s Motion for Summary
14 Adjudication. On November 20, 2019, the State Court denied AECOM’s Motion to Dismiss.

15 U. On October 21, 2019, JH Kelly filed in the Chapter 11 Cases a proof of claim
16 against the Utility. *See* Claim No. 76606 (“**JH Kelly POC**”). JH Kelly asserts in the JH Kelly
17 POC a secured claim for the full amount of the alleged Mechanics Lien for “[u]npaid labor,
18 services, equipment and/or materials subject to lien rights” in connection with the Project (the
19 “**Lien Claim**”), as well as interest on the Lien Claim. *See* JH Kelly POC Attachment 1, at 3–4.
20 The Lien Claim arises under the same Mechanics Lien that JH Kelly seeks to enforce in the
21 Foreclosure Action. *See* JH Kelly POC Attachment 1, at 4 (“JH Kelly has sued the [Debtor] in
22 the Superior Court of the State of California for Shasta County, Case No. 191759 . . . to recover
23 amounts owed to JH Kelly under the Lien Claim.”).

24 V. On February 5, 2020, JH Kelly filed in these Chapter 11 Cases a Motion for
25 Relief from the Automatic Stay (the “**Stay-Relief Motion**”). *See* Dkt. No. 5649. JH Kelly’s
26 Stay-Relief Motion seeks relief from the automatic stay to move to join the Utility as a party to
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1 the JH Kelly-AECOM State Action. A hearing on the Stay-Relief Motion (the “**Stay-Relief**
2 **Hearing**”) was scheduled for February 26, 2020. *See* Dkt. No. 5650.

3 W. On February 16, 2020, the Debtors filed a *Stipulation and Agreement for Order*
4 *Continuing Hearing on Motion for Relief from Stay Between the Utility and JH Kelly* to continue
5 the Stay-Relief Hearing to March 25, 2020 while the Parties conferred regarding a potential
6 resolution to the Stay-Relief Motion. *See* Dkt. No. 5797. On February 19, 2020, the Court
7 issued an order approving the stipulation to continue the Stay-Relief Hearing to March 25, 2020.
8 *See* Dkt. No. 5829.

9 X. On March 12, 2020, the Debtors filed the *Stipulation and Agreement for Order*
10 *Further Continuing Hearing on Motion for Relief from Stay between the Utility and JH Kelly* to
11 further continue the Stay-Relief Hearing to April 7, 2020 while the Parties continued to confer
12 regarding a potential resolution to the Stay-Relief Motion. *See* Docket No. 6266. On March 12,
13 2020, the Court issued an order approving the stipulation to further continue the Stay-Relief
14 Hearing to April 7, 2020. *See* Dkt. No. 6272.

15 Y. The Parties have conferred and desire to modify the automatic stay for the sole
16 purpose of permitting the consolidation in State Court of the Foreclosure Action with the JH
17 Kelly-AECOM State Action (such consolidated action hereinafter referred to as the
18 “**Consolidated Action**”) pursuant to a separate stipulation among them (the “**State Court**
19 **Stipulation**”).

20 Z. The Parties have further agreed to removal by the Utility of the Consolidated
21 Action to the United States Bankruptcy Court for the Eastern District of California (the “**Eastern**
22 **District Bankruptcy Court**”), to transfer the Consolidated Action from the Eastern District
23 Bankruptcy Court to this Court, and to consolidate in this Court the Consolidated Action with the
24 Third-Party Complaint, the AECOM Mechanic’s Lien, the AECOM POC, and the JH Kelly
25 POC. The Parties agree that such consolidation is appropriate and in the best interests of the
26 Parties, as the Consolidated Action, the Third-Party Complaint, the AECOM Mechanic’s Lien,
27 the AECOM POC, and the JH Kelly POC involve common questions of law and fact relating to
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1 the Project, and consolidation will promote judicial efficiency and economy (Federal Rule of
2 Bankruptcy Procedure 9027(a)). Upon such consolidation in this Court, any of the Parties may
3 file a motion, or all of the Parties may file a joint motion, with respect to withdrawal of the
4 reference of such consolidated matters to the United States District Court for the Northern
5 District of California.

6 **NOW, THEREFORE, IT HEREBY IS STIPULATED AND AGREED BY AND**
7 **BETWEEN THE PARTIES, THROUGH THE UNDERSIGNED, AND THE PARTIES**
8 **JOINTLY REQUEST THE COURT TO ORDER, THAT:**

9 1. This Stipulation, as well as the limited relief from the automatic stay provided
10 herein, shall become effective upon entry of an order by this Court approving it, notwithstanding
11 any contrary effect of Federal Rule of Bankruptcy Procedure 4001(a)(3).

12 2. The automatic stay shall immediately be modified solely for the limited purpose
13 of permitting the Parties to consolidate in the State Court the Foreclosure Action with the JH
14 Kelly-AECOM State Action pursuant to the State Court Stipulation. For the avoidance of doubt,
15 the automatic stay shall remain in effect in all other respects and nothing in this Stipulation
16 permits any prosecution of any claims against the Utility in the JH Kelly-AECOM State Action,
17 the Foreclosure Action, or the Consolidated Action in State Court.

18 3. This Stipulation is without prejudice to the merits of the Foreclosure Action, the
19 JH Kelly-AECOM State Action, the Third-Party Complaint, the AECOM Cross-Complaint, the
20 AECOM Mechanic's Lien, AECOM POC, or the JH Kelly POC, or to any Party's arguments
21 with respect to the same.

22 4. Nothing herein shall be deemed to modify or alter the requirements or obligations
23 of JH Kelly and AECOM to have timely filed proofs of claim in these Chapter 11 Cases in
24 accordance with any order of the Court governing the filing of claims, including but not limited
25 to the Order dated July 1, 2019, Dkt. No. 2806.

26 5. Upon entry of an Order approving this Stipulation, the Stay-Relief Motion shall
27 be deemed withdrawn and the Stay-Relief Hearing vacated.

28 6. In the event that the terms of this Stipulation are not approved by the Bankruptcy

1 Court, it shall be null and void and have no force or effect and the Parties agree that, in such
2 circumstances, this Stipulation and the State Court Stipulation shall be of no evidentiary value
3 whatsoever in any proceedings. Notwithstanding the foregoing, the fact of the parties' efforts to
4 have the terms of this Stipulation approved by this Court may be used by any party in support of
5 a request for a continuance of the State Court proceedings.

6 7. This Stipulation and the State Court Stipulation shall constitute the entire
7 agreement and understanding of the Parties relating to the subject matter hereof and supersede all
8 prior agreements and understandings relating to the subject matter hereof.

9 8. This Court shall retain jurisdiction to resolve any dispute regarding, and to
10 enforce, the terms of this Stipulation and the order approving it.

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12 Dated: March 20, 2020

WEIL, GOTSHAL & MANGES LLP

KELLER BENVENUTTI KIM LLP

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15 By: /s/ Theodore E. Tsekerides
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20 Dated: March 20, 2020

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Dated: March 20, 2020

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